IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1830 OF 2007

M/s.Pankaj Dairy Products ...Petitioner/Orig. Defendant

V/s.

The Kagal Sahakari Doodh Utpadak Sangh Maryadit ...Respondent/ Orig.Plaintiff

Mr.S.P. Kadam for Petitioner.
Ms.Archana Kologi i/b. T.S. Ingale for Respondent.

CORAM : V.M. KANADE, J.

DATED : 5th JULY, 2007.

P.C:-

1. Heard learned counsel for Petitioner and learned counsel for Respondent.

2. The Petitioner takes exception to the order passed by the Civil Judge, Jr. Division, Kagal whereby an application filed by the Petitioner who was original defendant for permitting him to raise counter-claim, was rejected. Suit was filed by the Respondent/Plaintiff in the year 1992 for recovery of certain amounts which was due and

payable to the Respondent/Plaintiff pursuant to the agreement which was executed by the parties in the year 1991. The Petitioner filed written statement on 06/01/1994 and in this written statement it was contended that the amount of Rs.15,000/- was given by him to the Respondent/Plaintiff by way of deposits and therefore, an application was preferred for permitting him to raise the counter-claim in the year 2003. This application was rejected.

3. Learned counsel for the Petitioner submits that cause of action accrued only after demand was made by the Petitioner for the return of said amount and this fact had taken place only after the application is filed. It is submitted that the counter-claim can be filed at any stage after written statement is filed and therefore, the application could have been allowed by the Trial Court.

4. It is no doubt true that it has been held by the Appellate Court that there is no bar in filing counter-claim even after the written statement is already filed. At the same time, it has also been held that raising of counter-claim would be permitted only after the cause of

action had accrued in favour of the defendant before he had filed his defence or before the time limit for delivering his defence is expired.

5. The Trial Court has held that the cause of action has already accrued before the defence. I do not see any infirmity in the said order. Hence, there is no reason to interfere with the order of the Trial Court. Petition is, accordingly, dismissed.

V.M. KANADE, J.